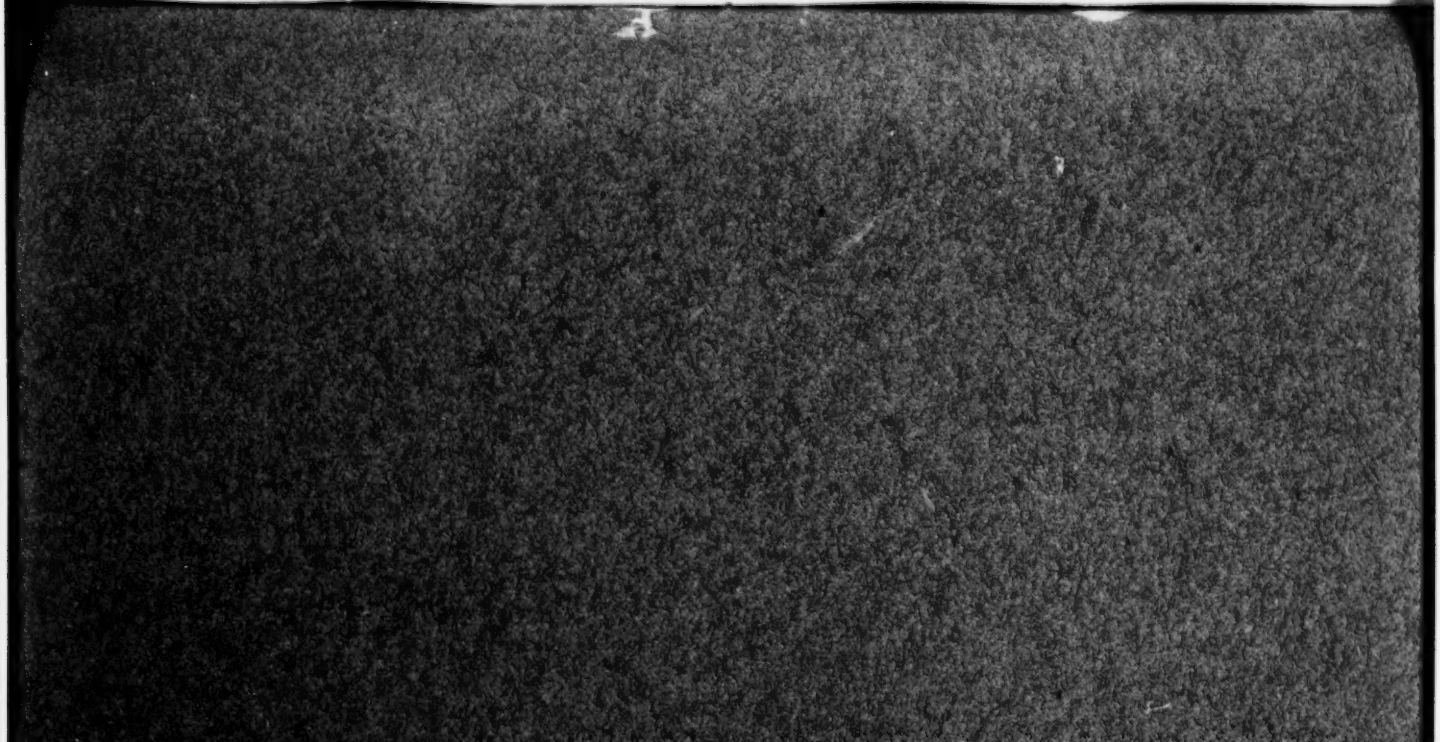

In the Supreme Court of the United States,

OCTOBER TERM, 1903, NO. 409.

THE INTERSTATE COMMERCE COMMISSION,
Appellant,

AGAINST

DAVID G. BAIRD, FRED F. CHAMBERS, GEORGE O. WATERMAN *et al.*,
Appellees.

MEMORANDUM ON BEHALF OF GEORGE O. WATERMAN, APPELLEE.

STATEMENT OF THE CASE.

On November 2, 1902, the petition and complaint of William Randolph Hearst against the Philadelphia and Reading Railway Company and nine other railroad companies was received by the Interstate Commerce Commission and filed in its office. This complaint charges the exaction of unjust and unreasonable rates on the transportation of anthracite coal; that the said rates are relatively unreasonable and unjust, and unjustly discriminative and unduly prejudicial to the interests of dealers and consumers in comparison with the rates on other traffic; that the said rates are fixed and maintained by combination and agreement; that the traffic is pooled or divided between the different railroads, in agreed proportions, and that earnings are pooled, &c. (Record. p. 39).

Each of the respondent railroad companies filled in the office of the Commission its sworn answer to the

complaint, denying, either generally or specifically, and in more or less detail, all of the essential allegations of the complaint (see Answers, Record, pp. 45–54).

Upon the issues thus joined the Commission ordered a hearing in the Post Office Building, in the City of New York, on April 21, 1903, which was continued from time to time. In the course of the hearings certain witnesses, who are the appellees here, were subpœnaed by the complainant to produce certain documents and to answer certain questions, which the said witnesses, under the advice of counsel, declined to do.

Thereafter, upon the petition of the Interstate Commerce Commission, the Circuit Court in the Southern District of New York made an order directing the various witnesses named in the petition to appear and show cause why the prayer of the Commission should not be granted, and orders entered directing the said witnesses to produce documents in question and answer the questions. Upon the return of the rule to show cause, the several respondents appeared by counsel and filed sworn answers to the petition (for answer of Geo. O. Waterman, see Record, p. 225). Argument was had, and subsequently an order was entered discharging the rule and dismissing the petition. From that order the Interstate Commerce Commission, having obtained permission of the Court below, has brought this appeal to this Court.

AS TO THE CASE OF GEORGE O. WATERMAN, APPELLEE.

The petition sets forth (Record, p. 6) that on April 22, 1903, George O. Waterman was called as a wit-

ness on behalf of the complainant, and having been duly sworn, the following proceedings took place:

"Mr. Shearn. Q. Mr. Waterman, are you the secretary of the Central Railroad of New Jersey?

Mr. Waterman. A. I am.

Mr. Shearn. Q. And have been how long?

Mr. Waterman. A. About two years.

Mr. Shearn. Q. Does the Central Railroad of New Jersey operate a railroad between the anthracite mining fields in Pennsylvania and Jersey City, New Jersey?

Mr. Waterman. A. It does.

Mr. Shearn. And has during all the time you know anything about it?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. A large part of its business is the transportation of anthracite coal, is it not?

Mr. Waterman. A. That is a very important part of it.

Mr. Shearn. Q. Do you know of the existence of a corporation called the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. In what State is that incorporated?

Mr. Waterman. A. State of Pennsylvania, I understand.

Mr. Shearn. Q. What is the business of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. Principally to mine and sell coal.

Mr. Shearn. Q. Anthracite coal?

Mr. Waterman. A. Anthracite coal.

Mr. Shearn. Q. Who is president of the Central Railroad of New Jersey?

Mr. Waterman. A. George F. Baer.

Mr. Shearn. Q. Who is president of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. The same gentleman.

Mr. Shearn. Q. Are you an officer of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. I am.

Mr. Shearn. Q. Do you know what the capital stock of that company is?

Mr. Waterman. A. About $10,000,000.

Mr. Shearn. Q. The Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. About $10,000,000.

Mr. Shearn. Q. Do you know who owns the capital stock of the company?

Mr. Waterman. A. The Central Railroad of New Jersey own a large portion.

Mr. Shearn. Q. Does it not own all of it?

Mr. Waterman. A. No, sir.

Mr. Shearn. Q. How many shares are owned by those other than the Central Railroad of New Jersey?

Mr. Waterman. A. About $1,000,000 in par value.

Mr. Shearn. Q. How many shares are there?

Mr. Waterman. A. $50 is par value. It would be about 20,000 shares.

Mr. Shearn. Q. Of the 20,000 shares, how many are owned by the Central Railroad of New Jersey?

Mr. Waterman. A. About nine-tenths of the total amount.

Mr. Shearn. Q. The balance is held by persons who qualify as directors of the company?

Mr. Waterman. A. No; owned by the Central Railroad of New Jersey.

Mr. Shearn. Q. I understand you to say nine-tenths of the stock is owned by the Central Railroad of New Jersey?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. Do you know how the balance is held?

Mr. Waterman. A. It is held by different parties, quite a number.

Mr. Shearn. Q. Are they directors of the Central Railroad of New Jersey?

Mr. Waterman. A. The directors hold some.

* * * * *

Mr. Shearn. Q. Are there any contracts in your possession or custody entered into since January, 1901, between the Lehigh and Wilkesbarre Coal Company and third parties for the purchase of anthracite coal?

Mr. Waterman. A. There were some contracts entered into.

Mr. Shearn. Q. How many?

Mr. Waterman. A. Three, as I am aware.

Mr. Shearn. Q. Since January, 1901?

Mr. Waterman. A. Yes, sir.

Mr. Shearn. Q. Do you know whether those contracts are still in existence?

Mr. Waterman. A. I presume they are.

Mr. Shearn. Q. They are in your custody, are they not?

Mr. Waterman. A. No, sir; not at present.

Mr. Shearn. Q. In whose custody are they?

Mr. Waterman. A. The last I saw of them they were handed to our counsel.

Mr. Thorne. They are in my custody now.

Mr. Shearn. But legally they are in his custody?

Mr. Thorne. Yes, sir.

Mr. Shearn. Q. As an officer of the Lehigh and Wilkesbarre Coal Company, you have the custody of the three contracts spoken of, have you not?

Mr. Waterman. A. I did have.

Mr. Shearn. Q. You brought them here in answer to that subpœna and have just handed them to your counsel, Mr. Thorne?

Mr. Waterman. A. That is it.

* * * * *

Mr. Shearn. Q. Please produce those contracts.

Mr. Waterman. A. They are not in my hands.

Mr. Thorne. Witness, under advice of counsel, declines to produce the contracts for the reason that they are not germane to any issue presented before this Commission, and they are not relevant or material to any issue that is within the power of this Commission to investigate, and they are contracts with third parties who are not parties to this proceeding and action, and are private business and should not be made public and disclosed in this proceeding. * * *

Comr. Prouty. Is any of the stock of your coal company on the market?

Mr. Waterman. I never saw any sales of it through the Stock Exchange.

Comr. Prouty. Is it owned by the people that own it for an investment--does it pay a dividends?

Mr. Waterman. No, sir.

Comr. Prouty. How long since it paid a dividend?

Mr. Waterman I do not remember. Not since I have been secretary—two years. * * *

The Chairman. We think you should be required to produce those contracts.

Mr. Thorne. And witness on the counsel's advice will decline to produce them.

The Chairman. And the Commission directs him to produce the contracts.

Mr. Thorne. I think that makes the record.

* * *

Mr. Shearn. You said you understood that the small fraction of the stock of the Lehigh and Wilkesbarre Coal Company that was not owned by the Central Railroad of New Jersey was held by *bona fide* investors?

Mr. Waterman. A. That would be the indication from the stock books. There are a large number of names spread throughout the country.

Mr. Shearn. Q. How many names are there?

Mr. Waterman. A. Well, from memory, I would say 70 or 75. I may be mistaken as to the number, but I think that is about the number.

Mr. Shearn. Q. Do you attend the annual meetings of the Lehigh and Wilkesbarre Coal Company?

Mr. Waterman. A. I have attended one; yes, sir.

Mr. Shearn. Q. Did you ever see one of these 70 minority stockholders present at any meeting?

Mr. Waterman. A. At the only meeting I attended there was a gentleman that I understood was a stockholder, and I understood that he represented others."

Judge Lacombe, of the Circuit Court, in his memorandum, denying the petition as to George O. Waterman, says (p. 834):

> " In the case of George O. Waterman, Secre-
> " tary of the Lehigh and Wilkesbarre Coal Com-
> " pany, the contracts appear to be all contracts
> " of purchase only, and the petition is denied."

The Lehigh and Wilkesbarre Coal Company was not a party to the proceedings before the Interstate Commerce Commission, and the contracts which its

secretary was asked to produce were contracts for the purchase of coal made with other parties, who were also not parties to that proceeding.

It is submitted, accordingly, that the Interstate Commerce Commission had no power to require this witness, as an officer of the Lehigh and Wilkesbarre Coal Company, to produce contracts or to answer questions in this proceeding concerning the conduct of the private business of that corporation as a merchant, in the purchase or sale of anthracite coal, and the witness was within his legal and constitutional rights in declining to produce the contracts in question.

The questions in the case as to Mr. Waterman are substantially the same as those in the case of each of the other appellees for whom briefs will be filed and argument made, and, therefore, counsel for Mr. Waterman do not deem it necessary to burden the Court with a more extended argument and brief on his behalf.

IT IS RESPECTFULLY SUBMITTED THAT THE ORDER OF THE CIRCUIT COURT SHOULD BE IN ALL THINGS AFFIRMED.

ROBERT THORNE,
ROBERT W. DE FOREST,
For Appellee, George O. Waterman.